

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

---

PHILIP EMIABATA and  
SYLVIA EMIABATA,

ORDER

v.

Plaintiffs,

07-C-465-C

MARTEN TRANSPORT, LTD. and  
FREIGHTLINER, INC.,

Defendants.

---

On March 21, 2008, defendant Marten Transport filed its third motion to compel discovery from plaintiffs. *See* dkt. 48. The court waited until March 31, 2008 to review this motion so as to allow plaintiffs time to mail a response to the court. When no response came in, I checked defendant's certificate of service: Marten Transport used Federal Express to send the motion overnight to plaintiffs' home address in Pflugerville Texas. *See* dkt. 50.

Ordinarily this would be sufficient, but as we have discussed many times in this case, plaintiffs, as over-the-road truckers, often are gone from their home for extended periods and will not commit to having neighbors check their mail. At our February 28, 2008 motion hearing, we agreed to try a more efficient method of providing actual service: according to plaintiffs, if defendant's attorneys call plaintiffs on plaintiffs' cell phone, plaintiffs can provide to defendants the telefax number at a truck stop on their route to which defendant could fax a document for the plaintiffs to pick up. *See* transcript of Feb. 28, 2008 telephonic status conference, dkt. 51 at 23-25. There is no indication that defendant tried to use this procedure and it failed.

Since no one knows if plaintiffs have been home to receive the motion delivered by Federal Express, defendant will have to attempt re-service using the cell phone /telefax method. If this does not work, then defendant needs to notify the court. Otherwise, the court must wait to consider defendant's pending motion until the earliest of these events: (1) The court receives plaintiff's response to the motion; (2) The response time runs after defendant perfects alternative service; or (3) Defendant can prove that plaintiffs actually received defendant's motion but did not respond to it within the five calendar days allowed by the September 13, 2007 preliminary pretrial conference order.

Entered this 31<sup>st</sup> day of March, 2008.

BY THE COURT:

/s/

---

STEPHEN L. CROCKER  
Magistrate Judge